

**Editor's note: Reconsideration denied by Order dated April 7, 1986.**

WAYNE J. STASTNY

IBLA 85-42

Decided February 27, 1986

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease, OR-35975 (Wash.).

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

Under 30 U.S.C. § 188(c) (1982), the Secretary is without authority to reinstate an oil and gas lease terminated by operation of law for failure to pay annual rental timely where the lessee fails to submit the full amount of rental due within 20 days of the anniversary date of the lease.

APPEARANCES: Wayne J. Stastny, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Wayne J. Stastny has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated September 28, 1984, denying his petition for reinstatement of noncompetitive oil and gas lease OR-35975 (Wash.).

Effective July 1, 1983, BLM issued a noncompetitive oil and gas lease to appellant for 667 acres of land situated in sec. 5, T. 4 N., R. 6 E., Willamette Meridian, Skamania County, Washington, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). By notice dated August 29, 1984, BLM informed appellant that his oil and gas lease had terminated on the anniversary date of the lease, July 1, 1984, for "failure to pay rental in a timely manner." The notice also identified the two statutory grounds for filing a petition seeking reinstatement of a terminated lease, i.e., either pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) or 30 U.S.C. § 188(d) and (e) (1982) (class II reinstatement). Appellant received the August 1984 BLM notice on September 7, 1984.

The record indicates that appellant mailed a check, dated September 4, 1984, in the amount of \$ 667, the annual rental with respect to lease OR-35975 (Wash.), on September 4, 1984, to the Minerals Management Service's (MMS)

Bonus and Rental Accounting Support System (BRASS) office in Denver, Colorado. The check was received by MMS on September 7, 1984, along with the courtesy notice sent to appellant.

On September 20, 1984, appellant filed a petition for reinstatement of lease OR-35975 (Wash.), stating the rental payment "has been made." Appellant noted that his last contact with BLM was notification that "BRASS had taken over collection [of annual rentals]."

In its September 1984 decision, BLM treated appellant's petition as a petition for a class I reinstatement, 1/ rejecting the petition on the basis that full payment of the annual rental had not been made within 20 days after the termination of the lease.

In his statement of reasons for appeal, appellant essentially argues that his lease should be reinstated because he paid in response to a courtesy notice and assurances from BLM that "everything will work out." In the alternative, appellant contends his lease never properly terminated because BLM had more than enough money on hand to cover the July 1984 annual rental payment, due to payment of advance rental for another lease offer, OR-35976 (Wash.), on March 4, 1983, in the amount of \$ 726.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when a lessee fails to pay the annual rental on or before the anniversary date of his lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2(a) (class I). Harry L. Bevers, 84 IBLA 158, 160-61 (1984).

Even assuming appellant could show that the failure to pay was justifiable or not due to a lack of reasonable diligence, class I reinstatement is unavailable to him because of his failure to meet the statutory requirement, i.e., to pay the rental within 20 days after the anniversary date. Samson Resources Co., 71 IBLA 224, 229 (1983).

Appellant, however, argues that his lease never terminated because BLM had sufficient money held for his account to cover the July 1984 annual

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1/ The record does not reflect any effort by appellant to comply with the requirements for a class II reinstatement. See 43 CFR 3108.2-3. However, the file was transmitted to the Board pursuant to the notice of appeal prior to the close of the 60-day period for pursuing such relief. Accordingly, the appeal before us is limited to appellant's petition for reinstatement pursuant to 30 U.S.C. § 188(c) (1982).

rental payment. <sup>2/</sup> The payment to which appellant refers is the first year's advance rental payment made by him on March 4, 1983, with respect to oil and gas lease offer OR-35976 (Wash.), as required by 43 CFR 3111.1-1(a). Lease offer OR-35976 (Wash.) was made for 726 acres of land situated in sec. 6, T. 4 N., R. 9 E., Willamette Meridian, Skamania County, Washington. The record indicates that the rental payment was credited to the account of lease OR-35976 (Wash.) which had not been issued at the time the appeal was transmitted. Despite the fact that the second lease had not issued, there is no provision in the regulations permitting payments made in connection with one lease offer to be automatically applied against obligations of an outstanding lease. Moreover, there is no evidence appellant ever informed BLM or MMS that the advance rental payment made in connection with lease offer OR-35976 (Wash.) should be applied to the July 1984 rental obligation of lease OR-35975 (Wash.). Without prior written authorization from the offeror on whose behalf advance rental was tendered, BLM/MMS may not transfer funds tendered for one lease account to a different lease account. See Stewart Capital Corp., 53 IBLA 369, 374 (1981); Wilfred Plomis, 51 IBLA 125 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Bruce R. Harris  
Administrative Judge

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<sup>2/</sup> This Board has previously held that where the lessee fails to file a notice of appeal within 30 days of receipt of the notice of termination, the issue of whether or not the lease terminated will not be considered in an appeal from a subsequent decision by BLM denying reinstatement. PRM Exploration Co., 90 IBLA 63, 92 I.D. 617 (1985). However, appellant's argument regarding funds held on account may still be considered relevant to the question of whether payment was tendered within 20 days of the lease anniversary date as required by 30 U.S.C. § 188(c) (1982).

